

IN THE MATTER OF
NATIONAL ASSOCIATION OF TEMPORARY SERVICES, INC.
CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3173. Complaint, Nov. 5, 1985—Decision, Nov. 5, 1985

This consent order requires an Alexandria, Va. association of temporary help companies, among other things, to cease engaging in any practices or maintaining any code of ethics provision or other written provision that has the purpose or effect of restraining the recruitment or employment of employees registered with another temporary help firm; the solicitation of another temporary help firm's clients; and the provision of temporary help employees to companies involved in a strike or lock-out. The Association is barred from affiliating or federating any organization of temporary help firms that has adopted by-laws or a code of ethics containing a prohibited provision; and required to maintain records relating to disaffiliations and refused affiliations or federations for three years. The order further requires that the Association send a copy of the complaint and order, together with an explanatory letter, to each of its current members and provide a copy of the order to all new members for a period of three years.

Appearances

For the Commission: *Dennis D. McFeely.*

For the respondent: *Arthur L. Herold, Webster, Chamberlain & Bean, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that National Association of Temporary Services, Inc., a corporation, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Definitions: For purposes of this complaint, the following definitions shall apply:

A. The term *temporary help employees* shall mean employees who are assigned to work for customers on a nonpermanent basis.

B. The term *temporary help firms* shall mean businesses employing temporary help employees.

C. The term *registration* shall mean the written, oral or other agreement of temporary help employees to be available to a temporary help firm for assignment to jobs.

PARAGRAPH 1. Respondent National Association of Temporary Services, Inc. (hereafter "NATS"), is a non-profit corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia. Its headquarters is at 119 South Saint Asaph St., Alexandria, Virginia.

PAR. 2. NATS is a trade association with approximately 400 members located in most of the states of the United States. It operates in substantial part for the economic benefit of its members and is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended.

Among its other activities, NATS has issued codes of ethical conduct for its members.

PAR. 3. Members of NATS primarily provide temporary help employees to businesses in the office/clerical, technical/professional, industrial, and medical fields. For supplying such employees, NATS members charge and receive payment from the businesses, usually at an hourly rate. The members in turn pay the temporary help employees for their work.

To have temporary help employees available to provide to businesses, NATS members and other firms in the temporary help industry make efforts to obtain the registrations of individuals who will work for them. These efforts may include advertising and direct solicitation of persons employed by other temporary help firms.

Except to the extent that competition has been restrained as herein alleged, members of NATS have been and now are in competition among themselves and with other temporary help firms in the procurement and sale of temporary services.

PAR. 4. Some of the members of NATS are firms with offices in many of the major cities of the United States and in the District of Columbia. These firms and other NATS members supply temporary help services across state lines and in the District of Columbia. NATS members also send and receive money, personnel, and communications across state lines as a regular and customary part of their business. As a result of these activities the acts and practices of NATS and its members, including those complained of in this complaint, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 5. NATS and its members have entered into a combination and arrangement to maintain code of ethics provisions and to engage in acts or practices, such as providing advice on the propriety of conduct.

that have the purpose or effect of restricting, restraining, limiting, or preventing:

1. the solicitation, the recruitment, or the employment by temporary help firms of the temporary help employees registered with other temporary help firms;
2. the solicitation of and advertising directed to the customers of temporary help firms by other temporary help firms;
3. the providing of temporary help employees to potential or existing customers of temporary help firms who are involved in a strike or a lock-out.

PAR. 6. The purpose or effect of NATS' acts and practices as alleged in Paragraph Five has been to restrain trade and hinder competition in the procurement of registrations of temporary help employees, in the solicitation of customers of temporary help firms by other temporary help firms, and in the providing of temporary help employees to potential or existing customers who are engaged in a strike or lock-out.

PAR. 7. The acts, practices and methods of competition described in Paragraphs Five and Six are unfair methods of competition which violate Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record

for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent National Association of Temporary Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 119 South Saint Asaph Street, in the City of Alexandria, Commonwealth of Virginia.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

For purposes of this order, the following definitions shall apply:

A. The term *NATS* means the National Association of Temporary Services, Inc., its successors or assigns, and its officers, board members, directors, committees, agents, representatives and/or employees.

B. The term *temporary help employees* shall mean employees who are assigned to work for customers on a non-permanent basis.

C. The term *temporary help firms* shall mean businesses employing temporary help employees.

D. The term *registration* shall mean the written, oral or other agreement of temporary help employees to be available to a temporary help firm for assignment to jobs.

II.

It is ordered, That NATS, directly or indirectly, or through any corporate or other device, in or affecting commerce, shall cease and desist from:

A. Maintaining any code of ethics provision, or other written provision, such as Paragraph 7 of the Code of Ethics, Paragraphs 5 and 7 of the Code of Fair Practices for Temporary Office/Clerical Services, and Paragraph 9 of the Code of Employment Practices for Medical Services which are contained in the NATS membership directory for

1983-1984, or engaging in any acts or practices, such as providing advice on the propriety of conduct, that have the purpose or effect of restricting, restraining, limiting, or preventing:

1. the solicitation, through advertising or otherwise, the recruitment, or the employment by any temporary help firm of the temporary help employees registered with any other temporary help firm;
2. the solicitation, through advertising or otherwise, of customers of a temporary help firm by any other temporary help firm;
3. the providing of temporary help employees to potential or existing customers who are involved in a strike or a lock-out.

B. Affiliating or federating as set forth in the NATS by-laws, or continuing an affiliation or federation, with any organization of temporary help firms that:

1. has adopted any by-law, code of ethics, or other provision that violates Section II.A of this order; or
2. has engaged in any act or practice that, to NATS' knowledge, violates Section II.A of this order after the date of service of this order.

III.

It is further ordered, That NATS shall:

A. Send to each of its members within thirty (30) days after the date of service of this order a copy of the complaint and decision and order in this matter, along with the letter attached to this order.

B. Provide written notice of the name and address of any organization of temporary help firms within twenty (20) days of the disaffiliation or refusal of affiliation or federation pursuant to Section II.B of this order. The notice shall be sent to the Assistant Director for Compliance, Bureau of Competition, Federal Trade Commission and shall reference this matter by name of case and docket number. NATS shall keep for three (3) years all papers and records pertaining to disaffiliations and refused affiliations or federations pursuant to this paragraph.

C. Provide for a period of three (3) years from the date of service of this order to each new NATS member and affiliate a copy of the complaint and decision and order in this matter. These documents shall be provided not later than thirty (30) days after the new member is accepted into membership or the organization is accepted as an affiliate.

IV.

It is further ordered, That NATS shall, within ninety (90) days after service of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

V.

It is further ordered, That NATS shall notify the Commission at least thirty (30) days prior to any proposed change in NATS including, but not limited to, disbanding, dissolution, assignment, the formation of a successor or substitute entity, or any other change in NATS which may affect compliance obligations arising out of this order.

ATTACHMENT

[NATS letterhead]

Dear Member:

This letter is to notify you that, without admitting liability for any wrongdoing, we have voluntarily entered into an agreement with the Federal Trade Commission which resulted in the entry of a consent order on [enter date of order]. The order requires that the National Association of Temporary Services, Inc. not engage in certain practices. Copies of the complaint and order are included.

In accordance with the terms of the order, you are hereby notified that, among other requirements of the order, NATS shall not restrict, restrain or in any way interfere through application of the NATS Codes of Ethics or otherwise with 1) the solicitation, through advertising or otherwise, the recruitment, or the employment by any temporary help firm of the temporary help employees of any other temporary help firm; 2) the solicitation, through advertising or otherwise, of customers of a temporary help firm by any other temporary help firm; or 3) the providing of temporary help employees to customers who are engaged in a strike or a lock-out.

Moreover, if any NATS affiliate association uses a code of ethics to restrict or limit the solicitation or recruitment of temporary help, such action will result in NATS disaffiliating with that association.

As you may know, we previously repealed the specific language in the Code of Good Practices for Office Services which had condemned direct solicitation of individuals employed by competing firms. The terms of the consent agreement with the FTC are consistent with this change in the Code of Good Practices.

This letter summarizes the important parts of the order, but you should read it carefully in its entirety.

Sincerely,

Samuel R. Sacco
Executive Vice-President